

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSEPH J. CURRY,

Petitioner,

V.

ELDON VAIL,

### Respondent.

Case No. C09-5144BHS

**ORDER DIRECTING  
RETURN, § 2254 PETITION**

This matter is before the court following the Honorable Benjamin H. Settle's review of the matter and the order issued October 27, 2009, granting Petitioner's request to dismiss his unexhausted federal habeas claims. A review of the matter shows that one claim remains, to which the court has not yet received an answer on the merits. Accordingly, the court orders as follows:

(l) By no later than Thursday, January 21, respondent shall file and serve an answer in accordance with Rule 5 of the Rules Governing § 2254 Cases in United States District Courts. As part of such answer, respondent should state whether an evidentiary hearing is necessary, and whether there is any issue of abuse or delay under Rule 9. Respondent shall not file a dispositive motion in place of an answer without first showing cause as to why an answer is inadequate.

## ORDER - 1

1 Respondent shall file the answer with the Clerk of the Court and serve a copy of the answer upon  
2 petitioner.

3 (2) The answer will be treated in accordance with Local Rule CR 7. Accordingly,  
4 upon receipt of the answer the Clerk will note the matter for consideration on the fourth Friday  
5 after the answer is filed, petitioner may file and serve a response not later than on the Monday  
6 immediately preceding the Friday appointed for consideration of the matter, and respondent may  
7 file and serve a reply brief not later than on the Thursday immediately preceding the Friday  
8 designated for consideration of the matter.

9 DATED this 7<sup>th</sup> day of December, 2009.  
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13 J. Richard Creatura  
14 United States Magistrate Judge  
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